

TEXT OF FINAL REGULATIONS

TITLE 3. CALIFORNIA CODE OF REGULATIONS CHAPTER 1. PESTICIDE REGULATORY PROGRAM SUBCHAPTER 3. AGRICULTURAL COMMISSIONER PENALTIES ARTICLE 1. GUIDELINES

Proposed deletions are indicated by ~~strikeout~~.
Proposed additions are indicated by underline.

Amend section 6130 to read:

6130. Civil Penalty Actions by Commissioners.

(a) When taking civil penalty action pursuant to section 12999.5 of the Food and Agricultural Code, county agricultural commissioners shall use the provisions of this section to determine the violation class and the fine amount.

(1) For purposes of this section, violations ~~classes~~ shall be designated as "~~serious,~~" "~~moderate,~~" and "~~minor~~" "Class A," "Class B," and "Class C."

(A) "~~Serious~~": Class A: ~~Violations that are repeat violations of those in subparagraph (B) or violations which created an actual health or environmental hazard, violations of a lawful order of the commissioner issued pursuant to sections 11737, 11737.5, 11896, or 11897 of the Food and Agricultural Code, or violations that are repeat Class B violations.~~ The fine range for ~~serious~~ Class A violations is ~~\$401-\$1,000~~ \$700-\$5,000.

(B) "~~Moderate~~": Class B: ~~Violations that are repeat violations of those in subparagraph (C) or violations which posed a reasonable possibility of creating a health or environmental effect or violations that are repeat Class C violations.~~ The fine range for ~~moderate~~ Class B violations is ~~\$151-\$400~~ \$250-\$1,000.

(~~3~~) (C) "~~Minor~~": Class C: ~~Violations that are not defined in either Class A or Class B did not create an actual health or environmental effect or did not pose a reasonable possibility of creating a health or environmental effect.~~ The fine range for ~~minor~~ Class C violations is ~~\$50-\$150~~ \$50-\$400.

(2) The currently alleged violation shall be considered a repeat violation if the following criteria are met:

(A) The person against whom the civil penalty action is proposed had a prior violation that was, or would have been, in the same class as the currently alleged violation; and

(B) A civil penalty was levied for the prior violation within two years of the date of the Notice of Proposed Action by the county proposing the current action.

(3) The person charged with a violation(s) shall be notified of the proposed fine action, including the amount of the proposed fine(s). When a penalty is proposed resulting in a repeat violation, the Notice of Proposed Action shall identify the prior violation and the record of the proceedings shall include a copy of the decision regarding that prior violation. The commissioner shall send a copy of the notice to the department at the same time the notice is provided to the person charged with a violation(s).

(4) If the person against whom the commissioner levied a fine requested and appeared at the hearing offered by the commissioner, the commissioner's decision shall include information concerning the person's right to appeal the commissioner's decision to the Director.

(5) The Department, on at least an annual basis, shall inform commissioners of violations for which fines have been levied.

(b) When acting pursuant to Food and Agricultural Code section 12999.5 or Business and Professions Code section 8617, an agricultural commissioner may bring an action against an employed person who failed to utilize personal protective equipment or other safety equipment as required by section 6702(c) provided the commissioner determines that all of the following conditions are met:

(1) The employed person is licensed or certified pursuant to Chapter 14, Division 3, of the Business and Professions Code; Chapters 5 or 8, Division 6, of the Food and Agricultural Code; or Chapters 3.4 or 3.6, Division 7, of the Food and Agricultural Code;

(2) The employer provided the equipment to the licensee or certificate holder and the equipment was available at the work site in a condition that would have provided the safety or protection intended by the equipment;

(3) The employer, through its written workplace disciplinary action policy, required the licensee or certificate holder to utilize the equipment;

(4) The employer has complied with applicable training requirements of this Division prior to the time the licensee or certificate holder failed to utilize the equipment;

(5) The employer supervised the licensee or certificate holder to assure that the equipment was properly used by the licensee; and

(6) At the time of the licensee's or certificate holder's failure to utilize the equipment, the licensee or certificate holder has knowledge of the discipline that could be imposed under the employer's written workplace disciplinary action policy for failure to utilize the equipment.

NOTE: Authority cited: Sections 12781, 12976, 12981 and 15203, Food and Agricultural Code. Reference: Sections 11892, 12973, 12997, 12999.5, and 15202, Food and Agricultural Code.